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2d Session }

SENATE

{ REPORT
116-316 }

ACHIEVING RACIAL AND ETHNIC EQUITY
IN DISASTER RESPONSE, RECOVERY, AND
RESILIENCE ACT OF 2020

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 3658

TO ESTABLISH AN OFFICE OF EQUAL RIGHTS AND COMMUNITY
INCLUSION AT THE FEDERAL EMERGENCY MANAGEMENT
AGENCY, AND FOR OTHER PURPOSES



DECEMBER 14, 2020.—Ordered to be printed

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Mr. JOHNSON, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 3658]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 3658), to establish an Office of Equal Rights and Community Inclusion at the Federal Emergency Management Agency, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 3658, the Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020, codifies and renames the existing Office of Equal Rights within the Federal Emergency Management Agency (FEMA) to the Office of Equal Rights and Community Inclusion. The purpose of the office is to reduce disparities in disaster preparedness, response, and recovery efforts. The bill clarifies and better defines the leadership and responsibilities for the office, and requires the Administrator of FEMA to review the agency’s current programs and activities to ensure they

align with its purpose. In addition, the bill requires that any future allegations of inequitable preparedness, response, or recovery activities as a result of the race or ethnic origins of historically underserved communities are reported to the Office for Civil Rights and Civil Liberties (CRCL) within the Department of Homeland Security (DHS or Department), as well as to Congress on a biennial basis.

II. BACKGROUND AND THE NEED FOR LEGISLATION

Ten years after Hurricane Katrina, more than half of New Orleans' neighborhoods had recovered to 90 percent of their pre-storm population, yet only 37 percent of its Lower Ninth Ward had returned.¹ Furthermore, only 1 in 3 African-American residents have returned to New Orleans.² As of 2016, New Orleans had 96,000 fewer African-American residents than its pre-storm resident population.³

Data suggests inequities in disaster preparedness, response, and recovery is not limited to Hurricane Katrina. For example, after Hurricane Harvey, “[h]ispanic and black residents were twice as likely as their white counterparts to report experiencing an income shock following the storm and then not getting the help they need to recover.”⁴ A survey conducted of more than 1,600 Texans found that following Hurricane Harvey, only 52 percent of the white respondents impacted by Harvey said they were able to get the help they needed; that number dropped to 46 percent for Hispanic and 32 percent for black respondents.⁵

An August 2018 study found that “as local hazard damages increase, so does wealth inequality, especially along lines of race, education, and homeownership. At any given level of local damage, the more aid an area receives from (FEMA), the more this inequality grows.”⁶ These findings, along with aforementioned findings, are concerning to Congress because they provide further evidence that the effects of a lack of access to FEMA’s programs are not short-term. Rather, access disparities create longstanding, systemic inequalities.

S. 3658 codifies the existing Office of Equal Rights and renames it the Office of Equal Rights and Community Inclusion. It provides more direction from Congress on how the office should improve access to disaster preparedness, response, and recovery programs to underserved communities and other historically disadvantaged communities moving forward, while also requiring the FEMA Ad-

¹ Greg Allen, *Ghosts of Katrina Still Haunt New Orleans’ Shattered Lower Ninth Ward*, NPR (Aug. 3, 2015, 3:52 AM), <https://www.npr.org/2015/08/03/427844717/ghosts-of-katrina-still-haunt-new-orleans-shattered-lower-ninth-ward>.

² Gary Rivlin, *White New Orleans Has Recovered from Hurricane Katrina. Black New Orleans Has Not.*, TalkPoverty (Aug. 29, 2016), <https://talkpoverty.org/2016/08/29/white-new-orleans-recovered-hurricane-katrina-black-new-orleans-not/>.

³ *Id.*

⁴ Connor Maxwell, *America’s Sordid Legacy on Race and Disaster Recovery*, Ctr. for Am. Progress (Apr. 5, 2018, 9:03 AM), <https://www.americanprogress.org/issues/race/news/2018/04/05/448999/americas-sordid-legacy-race-disaster-recovery/>.

⁵ Liz Hamel, Bryan Wu, Mollyann Brodie, Shao-Chee Sim, and Elena Marks, *An Early Assessment of Hurricane Harvey’s Impact on Vulnerable Texans in the Gulf Coast Region: Their Voices and Priorities to Inform Rebuilding Efforts* (Dec. 5, 2017), <https://www.kff.org/other/report/an-early-assessment-of-hurricane-harveys-impact-on-vulnerable-texans-in-the-gulf-coast-region-their-voices-and-priorities-to-inform-rebuilding-efforts/>.

⁶ Junia Howell & James Elliott, *Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States*, 66 Soc. Probs. 448, 448 (2018), <https://academic.oup.com/socpro/article/66/3/448/5074453>.

ministrator to conduct a review of the agency’s programs to meet the mission of the office.

S. 3658 also requires the FEMA Administrator to establish an initiative within FEMA’s Grant Programs Directorate to issue grants, cooperative agreements, and contracts to satisfy the goal of equality prior to the occurrence of an eligible emergency.

Finally, S. 3658 requires the Director of the Office of Equal Rights and Community Inclusion to investigate allegations of unequal assistance as a result of race or ethnic origin, or refer those allegations to CRCL and assist with its investigation. To strengthen oversight of this matter, as well as monitor whether further action and authorities need to be provided to achieve equality in FEMA’s disaster programs, the Administrator is required to biennially report to Congress on the activities of the office, including the number and nature of investigated or referred allegations.

III. LEGISLATIVE HISTORY

Ranking Member Gary Peters (D–MI) introduced S. 3658, the Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020, on May 7, 2020. The bill was referred to the Committee on the Homeland Security and Governmental Affairs.

The Committee considered S. 3658 at a business meeting on July 22, 2020. Ranking Member Peters offered an amendment that broadened the definition of “underserved communities” and moved the grant-making authority from the Office of Equal Rights and Community Inclusion to FEMA’s Grants Program Directorate. The Committee adopted the substitute amendment and ordered the bill, as amended, reported favorably both by voice vote *en bloc*. Senators present for both the vote on the amendment and the vote on the bill as amended were: Johnson, Portman, Paul, Lankford, Romney, Scott, Enzi, Hawley, Peters, Carper, Hassan, Harris, and Rosen. Senators Scott and Hawley asked to be recorded as having voted “No”.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section established that the bill may be cited as the “Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020”.

Section 2. Office of Equal Rights and Community Inclusion

Section 2 adds a new Section 529 into the Homeland Security Act of 2002 under Title V.

New Section 529, subsection (a) lays out the definitions for “Appropriate committees of Congress”, “Director”, “disaster assistance”, “Office” and “underserved community”. Subsection (b) codifies the Office of Equal Rights and Community Inclusion. Subsection (c) requires the Office to be led by a Director who has experience and expertise in underserved community inclusion research, disaster preparedness, or resilience disparities elimination.

New Section 529, subsection (d) defines the purpose of the Office of Equal Rights and Community Inclusion to: improve underserved community access to disaster assistance; improve the quality of dis-

aster assistance received by underserved communities; and eliminate racial, ethnic, and other underserved community disparities in the delivery of disaster assistance.

New Section 529, subsection (e) requires the Director to be responsible for the purposes set forth in subsection (d). It also requires the Administrator of FEMA to evaluate FEMA's programs and activities to ensure inclusion and engagement of underserved communities is being maintained and also establish an initiative to award grants or enter into cooperative agreements to achieve this goal. This subsection also requires the Director of the Office of Equal Rights and Community Inclusion to coordinate with: the Office of Minority Health of the Department of Health and Human Services; the Office of Disability Integration and Coordination of FEMA; the Office of Civil Rights of the Department of Agriculture; the Office for Civil Rights and Civil Liberties of DHS; and other relevant offices across the Federal Government to reduce disparities in preparedness, response, and recovery efforts. It also requires the Director to investigate allegations of unequal disaster assistance based on race or ethnic origin or refer allegations to CRCL within the Department and assist CRCL with its investigation.

New Section 529, subsection (f) requires the Administrator of FEMA to submit a report to the appropriate committees of Congress one year after enactment and biennially thereafter. The report will include a description of the agency's activities to reduce disparities in disaster preparedness, response, and recovery efforts, as well as the number and types of allegations the Office of Equal Rights and Community Inclusion investigated or referred to the Office of Civil Rights and Civil Liberties at DHS. Subsection (g) authorizes the necessary appropriations to carry out the authorities in the bill.

Section 2(b) of the bill is a technical and conforming amendment to reflect the title of the new section in the table of contents of the Homeland Security Act.

Section 2(c) of the bill requires the Director for the duration of the COVID-19 major disaster or emergency to regularly consult with state, local, territorial, and Tribal government officials that the Office of Equal Rights and Community Inclusion identifies as being disproportionately impacted by COVID-19 and clarifies that the Federal Advisory Committee Act requirements do not apply to that consultation.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office's statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

CBO failed to provide the Committee with a cost estimate in time for the final reporting deadline of the 116th Congress.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman:

HOMELAND SECURITY ACT OF 2002

* * * * *

TABLE OF CONTENTS

* * * * *

SEC. 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

* * * * *

TITLE I—DEPARTMENT OF HOMELAND SECURITY

* * * * *

TITLE V—NATIONAL EMERGENCY MANAGEMENT

Sec. 501. Definitions.

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Sec. 529. *Office of Equal Rights and Community Inclusion.*

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**TITLE V—NATIONAL EMERGENCY
MANAGEMENT**

* * * * *

SEC. 529. OFFICE OF EQUAL RIGHTS AND COMMUNITY INCLUSION.(a) *DEFINITIONS.—In this section—*(1) *the term “appropriate committees of Congress” means—*

(A) *the Committee on Homeland Security and Governmental Affairs of the Senate; and*

(B) *the Committee on Transportation and Infrastructure, the Committee on Oversight and Reform, and the Committee on Homeland Security of the House of Representatives;*

(2) *the term “Director” means the Director of the Office of Equal Rights and Community Inclusion;*

(3) *the term “disaster assistance” means assistance provided under titles IV and V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170 et seq.);*

(4) the term “Office” means the Office of Equal Rights and Community Inclusion; and

(5) the term “underserved community” means—

(A) the Native American community;

(B) the African-American community;

(C) the Asian community;

(D) the Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin) community;

(E) the Pacific Islander community;

(F) the Middle Eastern and North African community;

(G) a rural community;

(H) the low-income community;

(I) the disability community; and

(J) any other historically disadvantaged community, as determined by the Director.

(b) OFFICE OF EQUAL RIGHTS AND COMMUNITY INCLUSION.—

(1) IN GENERAL.—The Office of Equal Rights of the Agency shall, on and after the date of enactment of the Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020, be known as the Office of Equal Rights and Community Inclusion.

(2) REFERENCES.—Any reference to the Office of Equal Rights of the Agency in any law, regulation, map, document, record, or other paper of the United States shall be deemed to be a reference to the Office of Equal Rights and Community Inclusion.

(c) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by a Director, who shall report to the Administrator.

(2) REQUIREMENT.—The Director shall have documented experience and expertise in underserved community inclusion research, disaster preparedness, or resilience disparities elimination.

(d) PURPOSE.—The purpose of the Office is to—

(1) improve underserved community access to disaster assistance;

(2) improve the quality of disaster assistance received by underserved communities;

(3) eliminate racial, ethnic, and other underserved community disparities in the delivery of disaster assistance; and

(4) carry out such other responsibilities of the Office of Equal Rights as in effect on the day before the date of enactment of the Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020 as determined appropriate by the Administrator.

(e) AUTHORITIES AND DUTIES.—

(1) IN GENERAL.—The Director shall be responsible for—

(A) improving—

(i) underserved community access to disaster assistance; and

(ii) the quality of assistance underserved communities receive;

(B) eliminating racial, ethnic, and other underserved community disparities in the delivery of various preparedness, response, and recovery assistance; and

(C) carrying out such other responsibilities of the Office of Equal Rights as in effect on the day before the date of enactment of the Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020 as determined appropriate by the Administrator.

(2) **GRANTS AND CONTRACTS.**—In carrying out this section, to further inclusion and engagement of underserved communities throughout preparedness, response, recovery, and mitigation and to eliminate racial, ethnic, and other underserved community disparities in the delivery of disaster assistance as described in subsection (d), the Administrator shall—

(A) administer and evaluate Agency programs and activities, including the programs and activities of recipients of preparedness, response, recovery, and mitigation grants, in a manner to affirmatively further inclusion and engagement of underserved communities and improved outcomes for underserved communities tied to Agency programs and activities; and

(B) establish an underserved community initiative to award grants and enter into cooperative agreements and contracts with—

(i) local nonprofit entities;

(ii) national nonprofit organizations with experience administering programs in not fewer than 10 States; and

(iii) nonprofit organizations that are indigenous human services providers in underserved communities.

(3) **REDUCING DISPARITIES IN PREPAREDNESS, RESPONSE, AND RECOVERY.**—

(A) **IN GENERAL.**—The Director shall develop measures to evaluate the effectiveness of the activities of program offices in the Agency and the activities of recipients aimed at reducing disparities in the services provided to underserved communities.

(B) **REQUIREMENT.**—The measures developed under subparagraph (A) shall—

(i) evaluate community outreach activities, language services, workforce cultural competence, historical assistance for grants and loans provided to individuals, State, local, Tribal, and territorial governments, the effects of disaster declaration thresholds on underserved communities, historical barriers to equitable assistance across race and class during and after disasters, and other areas as determined by the Director; and

(ii) identify the communities implicated in the evaluations conducted under clause (i).

(C) **COORDINATION WITH OTHER OFFICES.**—In carrying out this section, the Director shall—

(i) participate in scenario-based disaster response exercises at the Agency;

(ii) coordinate with the Office of Minority Health of the Department of Health and Human Services;

(iii) coordinate with the Office of Disability Integration and Coordination of the Agency;

(iv) coordinate with the Office of Civil Rights of the Department of Agriculture;

(v) as appropriate, coordinate with other relevant offices across the Federal Government, including by leading a voluntary task force to address disaster response needs of underserved communities;

(vi) coordinate with the Office for Civil Rights and Civil Liberties of the Department; and

(vii) investigate allegations of unequal disaster assistance based on race or ethnic origin or refer such allegations to the Office for Civil Rights and Civil Liberties of the Department and assist the Office for Civil Rights and Civil Liberties with investigations of such allegations.

(f) *REPORTS.*—

(1) *IN GENERAL.*—Not later than 1 year after the date of enactment of the Achieving Racial and Ethnic Equity in Disaster Response, Recovery, and Resilience Act of 2020, and biennially thereafter, the Administrator shall prepare and submit to the appropriate committees of Congress a report describing the activities carried out under this section during the period for which the report is being prepared.

(2) *CONTENTS.*—Each report submitted under paragraph (1) shall include—

(A) a narrative on activities conducted by the Office, including a description of outreach and consultation efforts with advocacy organizations and human resource providers;

(B) the results of the measures developed to evaluate the effectiveness of activities aimed at reducing preparedness, response, and recovery disparities; and

(C) the number and types of allegations investigated or referred to the Office for Civil Rights and Civil Liberties under subsection (e)(3)(D)(vii).

(g) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated such sums as are necessary to carry out this section.

* * * * *